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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,491

03/11/2004

Kenneth E. Kellar

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6264

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02/14/2007

EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/798,491	Applicant(s) KELLAR ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on December 04, 2006.
2. Claims 37-58 are pending. Claims 54-58 are newly added.
3. Claims 37-58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19, 31-35 of U.S. Patent No. 6,828,294 in view of Hei et al. (US Patent No. 6,663,902), hereinafter "Hei".

US '294 teaches a similar sanitizer composition, method of sanitizing a surface and a sanitizer kit with the exception of a biopolymer in an amount from about 0.025 wt% to about 1.0 wt%.

Hei teaches a similar sanitizer composition comprising thickeners like guar gum and xanthan gum to enhance the viscosity of the composition to cling to the surface being treated (see col. 8, lines 12-15; 38-43), for easy and effective application, and for improved prophylactic effect (see col. 9, lines 7-13). In Table 6, Hei teaches a composition comprising a thickener like xanthan gum in an amount of 0.3 wt% (see col. 23, lines 6-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a thickener like guar gum or xanthan gum into the sanitizer composition of US' 294 in an amount of, say, 0.3 wt%, because this would enhance the viscosity of the composition in order to cling to the surface being treated,

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for easy and effective application, and for improved prophylactic effect to the composition as taught by Hei.

4. Claims 37-45, 48-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dankowski et al. (US Patent No. 4,879,057) for the reasons set forth in the office action dated July 18, 2006.

Response to Arguments

5. Applicant's arguments filed December 4, 2006 have been fully considered but they are not persuasive.

With respect to the obviousness-type double patenting rejection over U.S. Patent No. 6,828,294 in view of Hei, Applicants argue that, as indicated in the response to the earlier office action, the present application is a divisional of Application 10/213,027 which issued as US 6,828,294 and that the present claims were withdrawn from that application following a Restriction Requirement. The Examiner indicated that a review of the parent application shows no evidence of a restriction requirement, and in response, Applicant provided an internal record dated December 4, 2003 regarding a telephone message on the restriction requirement.

The Examiner respectfully disagrees with the above arguments because the obviousness-type double patenting rejection is proper for the reasons stated in paragraph 3 above. Double patenting rejection still should be made if the prior restriction requirement was not adequately explained in the record, see *Geneva*

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Pharmaceuticals, Inc. v. Glaxosmithkline PLC, 349 F3d 1373, 1382, 68 USPQ2d 1865, 1871, 1872 (Fed. Cir. 2003). Accordingly, said rejection is maintained.

With respect to the obviousness rejection of claims 37-45 and 48-50 based upon Dankowski, Applicants argue that the claimed composition is not an optimized embodiment of the Dankowski composition which is a bleaching agent suspension having a pourable to pasty consistency.

The Examiner respectfully disagrees with the above arguments because Dankowski teaches aqueous bleaching agent suspensions comprising an organic thickening agent such as xanthan polysaccharide in an amount of 0.01 to 5% by weight or agar polysaccharide in an amount of 0.05 to 0.5% by weight, and hydrate-forming neutral salts (see abstract; col. 4, lines 19-24); 1-40% by weight peroxycarboxylic acid (see col. 3, lines 53-56); up to 20% by weight anionic and/or non-ionic surfactants (see col. 6, lines 12-20); and the suspensions have a viscosity in the range from 50 to 100 mPas (50 to 100 cps) (see col. 3, lines 3-5). It is clear from these teachings that the peracid, polysaccharide, surfactant and viscosity overlaps those recited. As stated in the previous office action, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

Conclusion

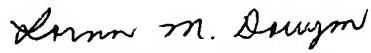
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
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